

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1678 OF 2005

Ashok C.Mehta. ... Petitioner
Versus.
Atul Shah and another. ... Respondents.

Shri Prakash Naik for the Petitioner.

Shri J.A.Udaypuri i/by M/s.Udaipuri & Co. for the
Respondent No.1.

Ms.M.M.Deshmukh, A.P.P. for the State.

CORAM : ABHAY S. OKA, J.

DATED : 26th July, 2005.

P.C.:

1. Rule. The learned Counsel for the Respondent No.1
waives service. The learned A.P.P. waives service for
Respondent No.2. Taken up for hearing forthwith.

2. After arguing the petition for sometime, the learned
Counsel appearing for the Petitioner stated that in case
the application for issuing witness summons made by the
Respondent No.1 on 17th May 2005 (Exh.A to this
petition) is allowed, the Petitioner will not apply for
recalling any of the witnesses who are already examined
by the Respondent No.1 and will not make any application
for leading any further evidence. The learned Counsel
appearing for the Respondent No.1 submitted that in view
of the said statement, the Respondent No.1 has no
objection if the said Application for issuing witness

summons is allowed. The learned Counsel for the Petitioner on instructions of the Petitioner stated that the Petitioner will unconditionally withdraw the application made by him before the learned Additional Sessions Judge, Mumbai, for transfer of the pending case to some other Court and the Petitioner has no objection if the case is heard and disposed of by the same learned Magistrate before whom the case is pending.

3. In view of the above, the Counsel appearing for the parties agree that the Writ Petition may be disposed of by a consent order.

4. Hence I pass the following order:

(i) The impugned order dated 17th May 2005 is quashed and set aside in so far as it rejects the Application for issuing witness summons (Exh.A hereto) and the said application is hereby allowed.

(ii) After the documents are produced in accordance with the witness summons which will be issued by the trial Court, it will not be open for the Petitioner to apply for recall of any of the witnesses who are already examined by the Respondent No.1 and

it will not be open for the Petitioner to apply for leading further evidence. The statement to that effect made by the learned Counsel for the Petitioner is accepted.

(iii) The statement made by the Petitioner that he will not press the application for transfer of the pending case is also accepted.

(iv) The learned Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai will decide the pending case as expeditiously as possible and preferably on or before 15th October 2005.

(v) All contentions of the parties on merits are expressly kept open.

(vi) Parties to act on an authenticated copy of this order.

Judge.